

*** NOT FOR PUBLICATION ***

NO. 26163

IN THE SUPREME COURT OF THE STATE OF HAWAII

BANK OF NEW YORK, Plaintiff-Appellant

vs.

WAYNE YOSHIO KANESHIRO, ANNE QUINONES, TOSHIO KANESHIRO,
MARY ANN KANESHIRO, Defendants-Appellees

and

JOHN and MARY DOES 1-20, DOE PARTNERSHIPS, CORPORATIONS OR OTHER
ENTITIES 1-20, Defendants

APPEAL FROM THE SECOND CIRCUIT COURT
(CIV. NO. 96-0461)

ORDER DISMISSING APPEAL

(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy, JJ.)

Upon review of the statements supporting and contesting jurisdiction, the motion to dismiss appeal, the papers in opposition to the motion and the record, it appears that the November 27, 2002 motion to reconsider the November 18, 2002 judgment extended the time for appealing the judgment until thirty days after entry of an order disposing of the motion. HRAP 4(a)(3). An order denying the motion was entered on October 9, 2003, but the order was not entered within the ninety-day maximum period prescribed by HRAP 4(a)(3) for disposing of the motion. Therefore, the November 27, 2002 motion was denied by operation of law on February 25, 2003, ninety days after the motion was filed. HRAP 4(a)(3). The denial of the motion by operation of law on February 25, 2003 triggered the thirty-day period for appealing the November 18, 2002 judgment. HRAP 4(a)(3). The October 17, 2003 notice of appeal was filed more than thirty days after February 25, 2003 and is an untimely appeal of the November 18, 2002 judgment. Thus, we lack

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jurisdiction over this appeal. See HRAP 26(b); Bacon v. Karlin, 68 Hawai'i 648, 650, 727 P.2d 1127, 1128 (1986) (The failure of an appellant to file a timely notice of appeal in a civil matter is a jurisdictional defect that can neither be waived by the parties nor disregarded by the appellate court in the exercise of judicial discretion). Accordingly,

IT IS HEREBY ORDERED that this appeal is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, January 20, 2004.